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9ZP345W

IN THE DISTRICT COURT OF GUAM
TERRITORY OF GUAM

UNITED STATES OF AMERICA,

Plaintiff,

vs.

INCHCAPE SHIPPING SERVICES GUAM,
LLC,

Plaintiff in Intervention,

vs.

MARWAN SHIPPING & TRADING CO.,
FIVE SEAS SHIPPING CO., LLC, and S.J.
GARGRAVE SYNDICATE 2724, *in*
personam,

Defendants.

AND CROSS-CLAIMS, COUNTERCLAIM,
AND CLAIM IN INTERVENTION

FILED
DISTRICT COURT OF GUAM

NOV 14 2007 8:11:20

JEANNE G. QUINATA
Clerk of Court

Case No.: 1:06-CV-00011

**EX PARTE APPLICATION FOR
ORDER TO SHORTEN TIME ON S. J.
GARGRAVE'S MOTION FOR LEAVE
TO FILE THIRD-PARTY COMPLAINT
AGAINST NAVIGATORS
PROTECTION & INDEMNITY**

Complaint Date: April 19, 2006
Trial Date: May 12, 2008

1 S. J. GARGRAVE SYNDICATE 2724,
2
3 Third-Party Plaintiff,

4 vs.

5 NAVIGATORS PROTECTION &
6 INDEMNITY,

7 Third-Party Defendant.

8
9 **I. APPLICATION FOR ORDER SHORTENING TIME**

10 Pursuant to Local Civil Rule 7.1(k), S. J. GARGRAVE SYNDICATE 2724 ("Gargrave")
11 hereby applies this honorable court for an order shortening the briefing schedule¹ set forth in
12 Local Civil Rule 7.1(d)(2) in regards to Gargrave's motion for leave to file third-party complaint
13 against NAVIGATORS PROTECTION & INDEMNITY ("Navigators"). Gargrave makes this
14 request so that Navigators can be made a party before the scheduled mediation of this action,
15 presently set for December 4 and 5, 2007. Navigators' inclusion in the mediation will serve the
16 interests of justice and greatly facilitate the resolution of this action, as well as the related action,
17 *Jose D. Leon Guerrero Commercial Port, et. al. v. Marwan Shipping & Trading Co., LLC et. al.*,
18 Civil Action No. 07-00010 ("Pier Damage Claim").

19 Local counsel for opposing parties are:

- 20 1. Mike W. Schwab, Esq.
21 2. Lawrence T. Teker, Esq.
22 3. David P. Ledger, Esq.
23 4. Thomas C. Sterling, Esq.
24 5. Thomas M. Tarpley, Jr., Esq.

25 On November 13, the undersigned contacted all attorneys of record by email, attaching
26 copies of all documents to be filed on this motion in compliance with L.R. 7.1(j). As of the time

27 ¹ Due to the same time constraints necessitating this application, Gargrave waives oral argument
28 on this application as well as the underlying motion for leave to file the third-party complaint against
Navigators.

1 of filing, only counsel for Marwan has responded by stating Marwan will not oppose these
2 motions.

3 Gargave respectfully submits the following statement of facts, points, and authorities in
4 support of its application for an order shortening time.

5 II. STATEMENT OF FACTS

6 The genesis of this action is the grounding of the M/V AJMAN 2 ("AJMAN 2") at Family
7 Beach in Apra Harbor, Guam, after she broke free of her moorings and beached. Plaintiff
8 UNITED STATES OF AMERICA ("United States") allegedly incurred expenses in retaining
9 salvors/wreck-removers TITAN SALVAGE ("Titan") to remove the AJMAN 2 from Family
10 Beach.

11 The United States then filed suit (the "Pollution Claim") against the owners/operators of
12 the AJMAN 2, MARWAN SHIPPING & TRADING CO., LLC ("Marwan") and FIVE SEAS
13 SHIPPING CO., LLC ("Five Seas"), and against Gargrave as the alleged financial-backer of the
14 Certificate of Financial Responsibility ("COFR") that Marwan and Five Seas procured for the
15 AJMAN 2 to enable the ship to enter United States waters.

16 On July 24, 2006, Gargrave filed a Third-Party Complaint against Navigators and AL-
17 BUHAIRA NATIONAL INSURANCE COMPANY ("Al-Buhaira"). (Declaration of Forest
18 Booth ("Booth Decl."), ¶ 3.) Gargave's Third-Party Complaint alleged that Navigators had
19 misrepresented material facts to Gargrave on Marwan's and Five Seas' behalves, and failed to
20 disclose other material facts, during the application for the COFR and policy of pollution
21 insurance underwritten for the AJMAN 2 by Gargrave. (Booth Decl., ¶ 3.) Discovery later
22 revealed that these were not viable claims against Navigators. (Booth Decl. ¶ 3.) Accordingly,
23 Gargrave dismissed its third-party complaint against Navigators, without prejudice, on or about
24 February 1, 2007. (Booth Decl. ¶ 4.) After another claim was dismissed by the Court, Navigators
25 is no longer a party to this action. (Booth Decl. ¶ 11.)

26 Meanwhile, the parallel suit Pier Damage Claim, arising from the same set of operative
27 facts, was proceeding in this Court. Prior to being moored in Apra Harbor, the AJMAN 2 had
28 been tied up at, and caused damage to, F-5 Pier, which is owned by the JOSE D. LEON

1 GUERRERO COMMERCIAL PORT ("Port") and insured by M. J. HARRINGTON
2 SYNDICATE 2000 ("Harrington Syndicate"). The Port and Harrington Syndicate sued Marwan,
3 Five Seas, Al-Buhaira, and Navigators in that lawsuit.

4 Harrington Syndicate and Gargrave are represented by the same counsel in the respective
5 actions. (Booth Decl. ¶ 6.) After Gargrave dismissed Navigators from the Pollution Claim, it
6 became aware through discovery in the Pier Damage Claim that Titan performed and billed for
7 services in salvaging the vessel and for wreck removal. (Booth Decl. ¶¶ 7 & 8.) Wreck removal
8 is specifically covered by the insurance that Navigators extended to Marwan ((Booth Decl. ¶¶ 7
9 & 8.) As such, Navigators is directly liable for some of the costs sought in the Pollution Claim,
10 and should be made a party thereto.

11 All parties in the Pier Damage Claim have agreed to a mediation of the dispute, to be held
12 in London, England, the week of December 3, 2007. (Booth Decl. ¶ 9.) Counsel are discussing
13 resolving that matter, and it is possible that the case will be settled before the mediation convenes.
14 (Booth Decl. ¶ 9.) Navigators, through their San Francisco-based counsel, have agreed to
15 participate in that mediation. (Booth Decl. ¶ 9.)

16 Gargrave and Harrington Syndicate are syndicates of Underwriters at Lloyds, London.
17 (Booth Decl. ¶ 10.) From time to time the lead claims adjuster at Gargrave has had direct
18 conversations about the AJMAN 2 claims with employees of Navigators in London. (Booth
19 Decl. ¶ 10.) Gargrave was told on a number of occasions that Navigators would be willing to
20 engage in a mediation together, as a package. (Booth Decl. ¶ 10.) Indeed, it was the
21 understanding of Gargrave and Harrington Syndicate that one of the reasons the parties agreed to
22 set aside two days for the London mediation was that one day would be devoted to resolving the
23 Pier Damage Claim, and the other the Pollution Claim. (Booth Decl. ¶ 13.) However, in late
24 October and November 2007, Navigators' counsel suddenly informed counsel for Gargrave and
25 Harrington Syndicate that Navigators, even though it can attend both mediations, is no longer
26 interested in mediating the Pollution Claim because Navigators is no longer a party this lawsuit.
27 (Booth Decl. ¶¶ 12 & 15.)
28

1 These actions are ripe for settlement, provided that Navigators comes to the table. (Booth
2 Decl. ¶ 14.)

3 III. POINTS & AUTHORITIES

4 Gargrave has filed concurrently a motion for leave to implead Navigators as a third-party
5 defendant in this admiralty action pursuant to Rule 14(c) of the Federal Rules of Civil Procedure.
6 Gargrave's third-party action against Navigators is meritorious, and an accelerated adjudication
7 of that motion is necessary in order to bring Navigators to the negotiating table on December 4 in
8 London so that the parties may reach an informal, universal settlement of this action and the Pier
9 Damage Claim.

10 Ordinarily, upon the filing of a motion not set for oral argument, "the opposing party shall
11 have fourteen (14) days from the date of the filing of the Motion to serve and file an
12 Opposition..." and the moving party seven days thereafter to reply (Local Civil Rule,
13 7.1(d)(2)(A) & (B).) However, departures from the normal briefing schedule are appropriate on a
14 showing of mere good cause, and may be determined on an ex parte basis. (Local Civil Rule,
15 7.1(k).) Applications for orders shortening time permitted or required by these Local Rules or the
16 Federal Rules of Civil Procedure for the filing of any paper or pleading or the doing of any act
17 shall be supported by a certificate stating the reasons therefore." (Local Civil Rule, 7.1(k).)

18 Good cause is easily demonstrated in the facts discussed above. Gargrave has a
19 meritorious claim against Navigators. But this matter is rapidly moving towards an informal
20 resolution. Navigators' involvement at the upcoming mediation will greatly facilitate the
21 likelihood of a universal settlement. Therefore, it is in the interest of all parties that this
22 honorable court review the papers in support and opposition of Gargrave's motion on a shortened
23 time. Gargrave seeks a resolution well in advance of the December 4, 2007 mediation.


24 Setting the parties' briefing schedule is a matter inherently within the sound discretion of
25 the court. In order that this court may reach a determination on Gargrave's motion for leave to
26 file its third-party complaint as to Navigators in sufficient time for the December 4 mediation in
27 London, especially in light of the intervening court holidays, Gargrave is willing to waive oral
28 argument. Gargrave also ask that Navigators' date to file an opposition be shortened from 14

1 days to 9 calendar days. Gargrave, in turn, will stipulation to file its reply brief within 4 court
2 days of Navigators' service of its opposition.

3 **IV. CONCLUSION**

4 Gargrave respectfully requests the court to set a shortening briefing schedule so that an
5 adjudication of its motion for leave to implead Navigators as a third-party defendant may be
6 determined on shortened time.

7 Dated this 14th day of November, 2007.

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10 
11 THOMAS McKEE TARPLEY,
12 Attorney for Defendant, Cross-Claimant
13 and Counterclaimant S. J. GARGRAVE
14 SYNDICATE 2724
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CERTIFICATE OF SERVICE

I, Dorothea Quichocho, hereby certify pursuant to Rule 5(d) Fed. R. Civ. P. that on November 14 2007, I caused to be served a true and correct copy of the EX PARTE APPLICATION FOR ORDER TO SHORTEN TIME ON S. J. GARGRAVE'S MOTION FOR LEAVE TO FILE THIRD-PARTY COMPLAINT AGAINST NAVIGATORS PROTECTION & INDEMNITY, to the following:

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Attorneys for Third Party Defendant Inchcape Shipping Services Guam LLC

7 Dated this 14th day of November, 2007.

8 
9
10 DOROTHEA QUICHOCHO